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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,950	03/25/2004	Chien-Chao Huang	24061.165 (TSMC2003.1068)	9808
42717	7590	08/11/2005	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			NGUYEN, THINH T	
			ART UNIT	PAPER NUMBER
			2818	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/810,950	HUANG ET AL.	
	Examiner	Art Unit	
	Thinh T. Nguyen	2818	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-56 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### Election/ Restriction

Claims 1- 56 are pending in this application.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

**Group I.**      **Claims 1-32** , drawn to a semiconductor device, is classified in class 257, subclass 250.

**Group II.**      **Claims 33-56**, drawn to a method of making a metal gate on the semiconductor , is classified in class 438, subclass 588.

2. In the case Applicants elect group I, these invention are further required to be restricted under 35 U.S.C. 121 as the following:

The claims are directed to the following patently distinct species of the claimed invention:

**Species I. Claims 1-7** as best as can be understood is described in claim 1 is directed to a semiconductor with all the technical features recited in claim 1.

**Species II. Claims 8-14** as best as can be understood is described in claim 8 is directed to a semiconductor with all the technical features as recited in claim 8.

**Species III. Claims 15-22** as best as can be understood is described in claim 15 is directed to a semiconductor with all the technical features as recited in claim 15.

**Species IV. Claims 23-25** as best as can be understood is described in claim 23 is

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directed to a semiconductor with all the technical features as recited in claim 23.

**Species V. Claims 26-28** as best as can be understood is described in claim 26 is directed to a semiconductor with all the technical features as recited in claim 26.

**Species VI. Claims 29-32** as best as can be understood is described in claim 32 is directed to a semiconductor with all the technical features as recited in claim 32.

3. In the case Applicants elect group II, these invention are further required to be restricted under 35 U.S.C. 121 as the following:

The claims are directed to the following patently distinct species of the claimed invention:

**Species A. Claims 33-44** as best as can be understood is described in claim 33 is directed a method for making semiconductor with all the technical features recited in claim 33.

**Species B. Claims 45-56** as best as can be understood is described in claim 45 is directed to a method for making semiconductor with all the technical features as recited in claim 45.

4. The inventions are distinct, each from the other because of the following reasons:  
Inventions group II and group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case unpatentability of the Group I invention would not necessarily imply unpatentability

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of the Group II invention, since the device of the group I invention could be made by processes materially different from those of the Group II invention. For example, in claim 33, the process of making the device of claim 1 wherein the step forming the metal layer on the gate electrode can be replaced by forming a conductive non-metal on the gate electrode which is a materially different method from claim 33 and the same structure of claim 1 will result.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, the fields of search are not co-existent. Therefore, separate examinations would be required and restriction for examination purposes as indicated is proper.

6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. for the species restriction requirement, Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

### CONCLUSION

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thinh T Nguyen whose telephone number is 571-272-1790.

The examiner can normally be reached on 9.00 AM 6.00 PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID NELMS can be reached on (571) 272-1787. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9319 for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval [ PAIR ] system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Thinh T Nguyen**

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